



POLICY FLASH

POLICY FLASH 2005-52

DATE: September 9, 2005
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Hurricane Katrina Emergency Contracting Authorities

SUMMARY: In order to facilitate the federal government's response to this natural disaster, various procurement authorities have been affected, which are summarized below.

Section 101 of the Emergency Supplemental Appropriations Act, enacted September 8, 2005, permits DOE (and other agencies) to use simplified acquisition and micro-acquisition procedures to support Hurricane Katrina rescue and relief operations. Although these procedures have been available since 1994, this Act increases the threshold for their use (see below).

GENERAL PROVISION

SEC. 101. For procurements of property or services determined by the head of an executive agency to be used in support of Hurricane Katrina rescue and relief operations--

(1) the emergency procurement authority in subsection 32A(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428a(c)) may be used; and

(2) the amount specified in subsections (c), (d), and (f) of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) shall be \$250,000.

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Section 101(1) permits the use of emergency procedures set out in 41 USC 428a ("Special emergency procurement authority") for current relief efforts and otherwise applies to "contingency operations" (defined in title 10 as a military operation that includes activating military in national emergencies) and to facilitate the defense and recovery from nuclear, biological, chemical, or radiological attack. 41 USC 428a increases the authority for "simplified acquisition procedures" and treats property and services as a "commercial items" purchase (see FAR 13.005).

Section 101(2) increases micro-purchase authority, enacted as part of the Federal Acquisition Streamlining Act of 1994, from \$2,500 to \$250,000 (see FAR 13.2).

In addition, the President has suspended Davis-Bacon coverage on those disaster areas affected. This proclamation is posted on the White House website at: <http://www.whitehouse.gov/news/releases/2005/09/20050908-5.html> An "All Agency" Memorandum from the Department of Labor, outlining specifics of this matter is forthcoming and available for review at www.wdol.gov.

The Secretary of Defense and the Secretary of Homeland Security have also determined that the circumstances in the aftermath of Hurricane Katrina warrant exercising the emergency procurement authorities authorized at 41 USC 428a. A memorandum from the Civilian Agency Acquisition Council invoking this authority is attached.

Finally, forwarded for your general information is an article published by Acquisitions Solutions, Inc. on contracting in an emergency situation, which summarizes the use of emergency procurement authorities.

DOE contracting officers and other acquisition officials are cautioned to use and properly document the above authorities only for those activities having a clear and direct relationship to the current emergency. However, the favorable consideration of requests for waivers or deviations to reporting requirements, applications, deliverables, etc. for contractors or financial assistance recipients with offices in the areas affected by Hurricane Katrina is highly encouraged.

Questions or assistance concerning this policy flash should be directed to Jackie Kniskern at 202-287-1342 or jacqueline.kniskern@hq.doe.gov.



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Attachments